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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 775

MATSON NAVIGATION COMPANY, A CORPORATION, PETITIONER,

v.

WAR DAMAGE CORPORATION, A CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Northern District of California, Southern Division (R. 64-77), is reported at 74 F. Supp. 705. The opinion of the Court of Appeals (R. 384-386) is reported at 172 F. 2d 942.

JURISDICTION

The judgment of the court below was entered February 28, 1949 (R. 387). The petition for a writ of certiorari was filed on May 9, 1949. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Does the protection of the War Damage Corporation Act apply to ships on the high seas, on the theory that ships are a form of "property in transit" within the meaning of the Act?

STATUTE INVOLVED

The War Damage Corporation Act (Section 5g of the Reconstruction Finance Corporation Act), 56 Stat. 175, set forth in full, Appendix, *infra*, pp. 8-10, was adopted after Pearl Harbor on March 27, 1942, to provide protection against damages or loss by enemy attacks for property located in, or "in transit" between any points in the United States, its territories or possessions. This protection was to be provided as quickly as possible by insurance, but until insurance for this danger should be made available by the Corporation (not later than July 1, 1942), protection for losses which incurred after December 6, 1941, was to be provided free of charge, as if covered by insurance. After a date to be determined by the Secretary of Commerce (not later than July 1, 1942), the War Damage Corporation was not to protect property in transit upon which the Maritime Commission was authorized to provide marine war risk insurance.

STATEMENT

Petitioner's ship, the Lahaina, was sunk by a Japanese submarine on December 11, 1941, while

enroute from Hawaii to the continental United States (R. 3). Three years later, on December 29, 1944, petitioner filed a claim under the War Damage Corporation Act, *infra*, pp. 8-10, with respondent for public compensation for the loss of its ship (R. 5). Respondent rejected the claim on January 19, 1945 (R. 5). Petitioner thereupon filed suit in the district court on March 22, 1945, against respondent for $820,000, the asserted value of the ship (R. 2-7).[1] Respondent answered denying any liability (R. 7-21). At the hearing in the district court on April 30, 1947, the decisive issue was the scope of the statutory protection of "property in transit." On December 19, 1947, the district judge dismissed the complaint (R. 85-86), accompanying his decision with an opinion which contains a thorough anaylsis of the legislative history of the Act including hearings, Committee reports and the debates (R. 64-77). The opinion concludes that Congress never intended any coverage of ships by the War Damage Corporation Act (R. 75). The Court of Appeals, in affirming the district court judgment, stated that the legislative evidence to this effect was "simply overwhelming" (R. 386).

ARGUMENT

The intent of Congress to exclude ships from the protection of the War Damage Corporation Act is clear throughout the entire legislative his-

[1] At the trial, the agreed value of the Lahaina was stated to be $615,000 (R. 64).

tory of the statute. The purpose of the Act was to afford protection not otherwise available against loss by enemy action. It cannot seriously be contended that petitioner's loss falls within the protected class. As exhaustively demonstrated in the district court opinion (R. 64-77), everyone concerned with the bill knew or was informed in the course of the hearings and the debates, that ships were covered by an entirely distinct scheme of marine war risk insurance underwritten by the United States Maritime Commission. Merchant Marine Act of 1936, as amended, 1940, 54 Stat. 689.

The language of the statute carries out the plain congressional purpose and goes no further. The statutory phrase, "property in transit," was designed to protect goods being transported by ships, trains, planes or trucks between any points in the United States and its territories and possessions.[2] Marine cargoes were covered because it was thought that the United States Maritime Commission could not, under then existing law, insure cargoes carried in foreign ships, through it could protect such cargoes carried in American vessels.[3] The Senate,

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[2] "Mr. WILLIAMS: (House Committee member) Is it the intention that goods in transit, on railroads and ships, or trucks, would be covered by this provision?

"Mr. JONES: They could all be brought in if you included that language." (House Banking and Currency Committee Hearings on H.R. 6382 (S. 2198), 77th Cong., 2d sess., p. 44.)

[3] "Mr. GIFFORD. [House Committee Member] It is my understanding that the insurance handled by the Maritime Commission is through offering facilities to the public to make it possible to secure insurance at reasonable rates, and to

which first acted on the bill, covered all marine cargo by the term "property in transit." This overlapping coverage was not accepted by the House Committee,[4] and it excepted from the protection of the bill cargoes for which marine war risk insurance was available.[5] The difficulty, however, still remained that a shipper could not tell at the time of shipment whether his goods would be carried in an American or a foreign bottom.[6] The matter was adjusted in conference by provid-

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reinsure an insurance company whenever insurance cannot be secured otherwise. * * *

"Mr. HAMILTON. [R.F.C. General Counsel] It is my understanding that that is the method of operation. There has been one serious criticism of the law, namely, that the shipper could not be sure that his cargo will be carried by American vessels.

"The CHAIRMAN. Then as I understand it, their authority is limited to the insuring of American bottoms?

"Mr. HAMILTON. That is correct." (*Op. cit., supra,* note 1, p. 42).

[4] "The CHAIRMAN. * * * There is one matter that has been raised that must be made clear before the committee reports this bill to the House. That is the question as to whether there is any possible overlapping of the authority to be conferred by this bill and the powers now vested in the Maritime Commission.

"As I understand it, Mr. Jones, you have no thought of undertaking any activities covered by the Commission?

"Mr. JONES. That is correct." (*Op. cit., supra,* p. 41).

[5] "The CHAIRMAN. I think I can clear this up. I have a letter here from Admiral Land. He suggests an amendment very similar to the Lynch amendment, which reads:

> *Provided,* That such protection shall not be extended to property in transit upon which the United States Maritime Commission is authorized to provide marine war-risk insurance.

"He says that will satisfactorily straighten out this matter.

"Mr. WILLIAMS. That is my idea exactly." (*Op. cit., supra,* p. 88).

[6] See footnote 3, *supra.*

ing that all cargoes would be protected for a brief period until the Secretary of Commerce certified that marine war risk insurance was available for all cargoes.[7]

It is clear that the loss of the Lahaina does not fall either within the purpose or the language of the War Damage Corporation Act. Marine war risk insurance on hulls was available at reasonable rates during the period when the loss occurred. Petitioner's failure to have obtained such insurance, either from the Government or from commercial sources, cannot suffice to bring it within the class protected by the statute. Nor does petitioner base its claim on any such substantial grounds. Rather, it seeks to force its claim on a technical reading of the language of the statute, one which, we submit, is plainly unjustified. As shown above, the statutory phrase, "property in transit," was intended by Congress to provide marine cargo coverage, not hull coverage. The exclusion of vessel coverage from the statute is conclusively shown in the excerpt upon which petitioner places mistaken reliance (Pet. 21). In the quoted excerpt, both the Chairman of the House Committee in charge of the bill which became the War Damage Corporation Act, and the Chairman of the House Merchant Marine and Fisheries Com-

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[7] This date could not be later than July 1, 1942, or three months after the Act was passed on March 27, 1942. In fact, the amendments to the Merchant Marine Act providing full coverage for all marine war risks, including cargoes, was passed on April 11, 1942, 56 Stat. 214, 46 U.S.C. 1128a.

mittee plainly advised the House, in response to a direct question, that the bill did not cover vessels.[8]

CONCLUSION

The question presented is of no general importance. The War Damage Corporation Act was repealed by the Act of June 30, 1947, Sec. 206 (x) (61 Stat. 209), and the last date for the occurrence of Maritime losses, which might on some theory be covered by the Act, was July 1, 1942. No similar claims for vessels are pending (R. 347) and no new claims can be made, so that the interpretation of the statute involved in this case involves only the claim at bar. The judgment of the court below is clearly correct, and the petition for a writ of certiorari should be denied.

Respectfully submitted,

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JUNE 1949.

[8] Petitioner's reliance upon scattered remarks and loose impromptu statements of the House Chairman (Pet. 30) is misplaced. Frankfurter, *Some Reflections Upon The Reading Of Statutes,* 47 Col. L. Rev. 526, 533.

APPENDIX

The War Damage Corporation Act (Section 5g of the Reconstruction Finance Corporation Act), 56 Stat. 175, provides in part as follows:

> SEC. 5g. (a) The Reconstruction Finance Corporation is hereby directed to continue to supply funds to the War Damage Corporation, a corporation created pursuant to section 5d of this Act; and the amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this subsection. Such funds shall be supplied only upon the request of the Secretary of Commerce, with the approval of the President, and the aggregate amount of the funds so supplied shall not exceed $1,000,000,000. The Reconstruction Finance Corporation is authorized to and shall empower the War Damage Corporation to use its funds to provide, through insurance, reinsurance, or otherwise, reasonable protection against loss of or damage to property, real and personal, which may result from enemy attack (including any action taken by the military, naval, or air forces of the United States in resisting enemy attack), with such general exceptions as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable. Such protection shall be made available through the War Damage Corporation on and after a date to be determined and published by the Secretary of Commerce which

shall not be later than July 1, 1942, upon the payment of such premium or other charge, and subject to such terms and conditions, as the War Damage Corporation, with the approval of the Secretary of Commerce, may establish, but, in view of the national interest involved, the War Damage Corporation shall from time to time establish uniform rates for each type of property with respect to which such protection is made available, and, in order to establish a basis for such rates, such Corporation shall estimate the average risk of loss on all property of such type in the United States. Such protection shall be applicable only (1) to such property situated in the United States (including the several States and the District of Columbia), the Philippine Islands, the Canal Zone, the Territories and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States, (2) to such property in transit between any points located in any of the foregoing, and (3) to all bridges between the United States and Canada and between the United States and Mexico: *Provided,* That such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection to property in transit upon which the United States Maritime Commission is authorized to provide marine war-risk insurance. The War Damage Corporation, with the approval of the Secretary of Commerce, may suspend, restrict, or otherwise limit such protection in any area to the extent

that it may determine to be necessary or advisable in consideration of the loss of control over such area by the United States making it impossible or impracticable to provide such protection in such area.

(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under subsection (a), may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge, and such loss or damage may be adjusted as if a policy covering such property was in fact in force at the time of such loss or damage.

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